suit, since the corporation's privilege of deducting an officer's salary depends not on the reasonableness but on the bona fides of the salary. *United States v. Phila. Knitting Mills Co.* (1920, E. D. Pa.) 268 Fed. 270.

The opinion does not indicate what years' taxes were in dispute, but it appears from a newspaper comment on the decision that the taxes in question were for the years 1909-1912. The Corporation Tax Act of 1909 permitted deduction from gross income of "all the ordinary and necessary expenses actually paid within the year" in the operation of the corporation's business. 36 Stat. at L. 113. Substantially the same phraseology was continued in the Income Tax Act of 1913 and of 1916; no express reference being made to salaries. 38 *id.* 172; 39 *id.* 759, 767. Under these Acts the problem is whether the employer may determine for himself the necessity of the expense with respect to a given salary, or whether the question of what was an ordinary and necessary expenditure for services shall be submitted to a jury. The principal case is believed to be sound within the limits of good faith. A mere error of judgment or undue liberality to an employee ought not to deprive the employer of the privilege of deducting. When the name of compensation for services is used really as a cloak to cover a distribution of profits or income, the deduction cannot stand. *Jacob & Davies, Inc. v. Anderson* (1915, C. C. A. 2d) 228 Fed. 505. The Revenue Act of 1918 expressly includes among deductible expenses "a reasonable allowance for salaries." Secs. 214 (a), 234 (a). Possibly this phrase gives the taxing officials power to review excessive salaries paid by a tax payer even though no mala fides is involved. Of course Congress may, if it chooses, limit deductions in respect to salaries to fair compensation for services rendered. The Treasury Regulations assume that it has done so. U. S. Int. Rev. Reg. 45, art. 105, 106; see Holmes, *Federal Income and Profits Taxes* (1920) 347, and *1921 Suppplement*, 220. No known judicial determination of the question has yet been rendered.

WILLS—CONSTRUCTION OF "LAPSE."—The testator's will provided that the residuum should go to four relatives in equal shares, and that in case any of them should die before the testator, his portion should "lapse." A statute declared that upon the death of any relative legatee before the testator, his share should go to his lineal descendants. One of the legatees having predeceased the testator, this bill was brought by the administrator for a construction of the will and an order determining the devolution of the share of the deceased relative. *Held*, that the will created a tenancy-in-common and hence no right of survivorship, with a *dictum* that the use of the word "lapse" prevented the application of the above statute to the disputed legacy and made it intestate property. *Hay v. Dole* (1920, Me.) 111 Atl. 713.

At common law, if a residuary legatee dies before the testator, his legacy is said to lapse, going to the heirs of the testator. *Stetson v. Eastman* (1892) 84 Me. 366, 24 Atl. 868; see *Farnsworth v. Whiting* (1906) 102 Me. 296, 300, 66 Atl. 831, 832. It would seem then that the testator in the instant case has merely expressed what the law would imply anyway. But the statute involved in the case has changed the common-law rule, so that when a legacy to a relative lapses, it goes to the lineal descendants of the relative and not to the heirs of the testator. Rev. St. Me. 1903, ch. 76, sec. 10. Hence in the absence of a clear intention to the contrary, the lineal descendants of the deceased legatee in the instant case, if any, should take such an interest as would have been taken by the deceased legatee. See *Keniston v. Adams* (1888) 80 Me. 290, 294, 14 Atl. 203, 204. The express declaration by the testator of the common-law rule would scarcely seem under the circumstances to afford evidence of such an intention. But even assuming that there is a clear intention to the contrary, it would seem very doubtful whether it should be given effect in view of the fact that the statute is based on public policy. See *Winter v. Winter* (1846, Ch.) 5 Hare, 306, 312;

see *Nutter v. Vickery* (1874) 64 Me. 490, 498. Although the dictum in the instant case is questionable, the decision that the surviving legatees take as tenants-in-common and that as far as they are concerned the heirs of the testator prevail, is undoubtedly sound. *Magnuson v. Magnuson* (1902) 197 Ill. 496, 64 N. E. 371; see *Herzog v. Title Guarantee & Trust Co.* (1903) 177 N. Y. 86, 93, 69 N. E. 283, 285.

WILLS—SOLDIERS' WILLS—REVOCATION OF FORMAL WILL BY UNATTESTED WRITING.—The testator, a soldier in the English army, made a formal will leaving property to his fiancée. He then was sent into active service. Later, because of certain information received by him, he broke off the engagement, and wrote to his sister, who had the will, instructing her to burn it, which she did. The testator died in service. After his death an unattested copy of the destroyed will was found. *Held,* that the will had been effectually revoked by the letter. *Wood v. Gossage* (1921, C. A.) 37 T. L. R. 302.

The English Wills Act provides that a will may be revoked "by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed." Wills Act, 1837 (1 Vict. c. 26) sec. 20. A writing, therefore, is usually inoperative as a revocation, unless signed by the testator, and attested by two witnesses, as required for the validity of a will. Wills Act, *supra,* sec. 9; *Toomer v. Sobinska* [1907] P. 106. But a soldier in actual military service is exempt from these requirements in the execution of a will disposing of personalty. Wills Act. *supra,* sec. 11; see COMMENTS (1918) 27 YALE LAW JOURNAL, 806. So an informal soldier's will may be probated with a prior formal will. *Winter v. Pawle* (1918, P.) 34 T. L. R. 437. And an *informal* soldier's will revokes a prior inconsistent formal will, except as to real estate. *Nixon v. Prince* (1918) 34 T. L. R. 444. Similarly, in Virginia, a holographic will revokes a prior inconsistent formal will. *Gordon v. Whitlock* (1896) 92 Va. 723, 24 S. E. 342. The court in the instant case construes secs. 11 and 20 of the Wills Act to mean that, since no formalities are required for the execution of a soldier's will, none are required for its revocation. That a soldier should have the same privilege in revoking as in executing a will seems a just exception to the usual modern requirements for revocation. The decision obviously carries out the intention of the testator.